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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,466	07/14/2004	Hanne Larsen	P16859 USPC	4526
29078	7590	05/17/2005	EXAMINER	
CHRISTIAN D. ABEL ONSAGERS AS POSTBOKS 6963 ST. OLAVS PLASS NORWAY, N-0130 NORWAY			FITZGERALD, JOHN P	
			ART UNIT	PAPER NUMBER
			2856	
DATE MAILED: 05/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

HA

<b>Office Action Summary</b>	<b>Application No.</b> 10/501,466	<b>Applicant(s)</b> LARSEN ET. AL.	
	<b>Examiner</b> John P. Fitzgerald	<b>Art Unit</b> 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-7 is/are rejected.
- 7) ☒ Claim(s) 1-4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/25/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-5 are objected to because of the following informalities: Specifically, independent claim 1 recites “Eqn. (5)” in line 16. Although the instant specification provides antecedent basis for this limitation within the claim, the Examiner requires that the Applicant enter the full equation (i.e. Eqn. (5) found on page 4 of the instant specification) within the claim, thus making the limitation clear to one of ordinary skill in the art. The Examiner suggests the text: “employ the two measured concentrations of the gaseous substance in the equation:

$$\frac{dV_{\text{Oxygen}}}{dt} = \frac{V\kappa}{P_{\text{atm}}}(p_0 - p_1)e^{-\kappa(t-t_1)}.$$

A similar argument is made for independent claim 3, however,

the statement: “(employ Eqn. (3) instead of (5))” is not acceptable. The Examiner requires that the Applicant enter the full equation (i.e. Eqn. (3) found on page 3 of the instant specification) within the claim. Additionally regarding claim 3, the statement “instead” is unnecessary, and simply stating: “employing the equation:  $p(t) = p_0 + (p_1 - p_0)e^{-\kappa[t-t_1]}$  is sufficient. Appropriate correction is required.

As to claim 5, an unnecessary “a” is placed before “gas samples” in line 6. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

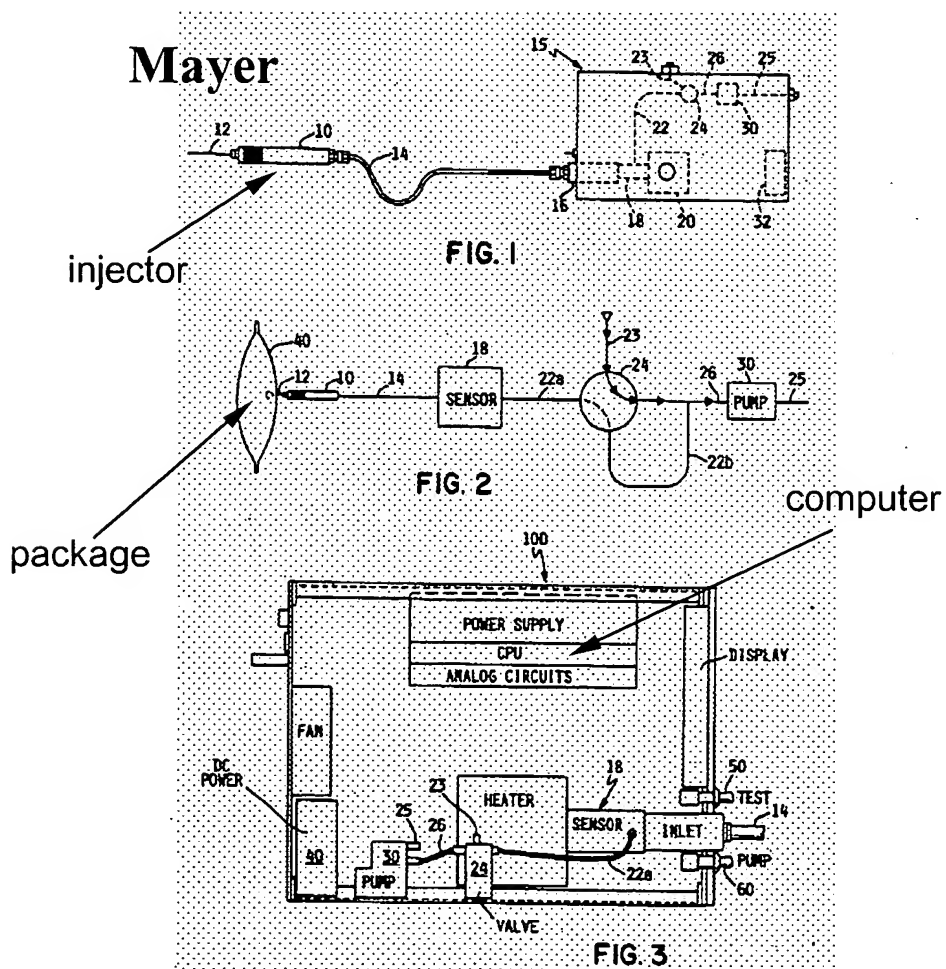
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 5 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 5,212,993 to Mayer. Mayer discloses a device (100) (Figs. 1-3) for determining spot tests of the penetration rate of a gaseous substance ( $O_2$ , as recited in claim 6) into a closed package (40), where the package that is being tested is initially flushed with an inert gas ( $N_2$ , as recited in claim 6) having all of the limitations of the claims including an injector (i.e. syringe) (10) with a hollow needle (12) which is capable of withdrawing gas samples from the interior of the package, a gas analyzer (Fig. 3) that is in communication with the injector and which determines the concentrations of the gaseous substance, and means for displaying (see Fig. 3) the resultant gas concentration.



***Claim Rejections - 35 USC § 103***

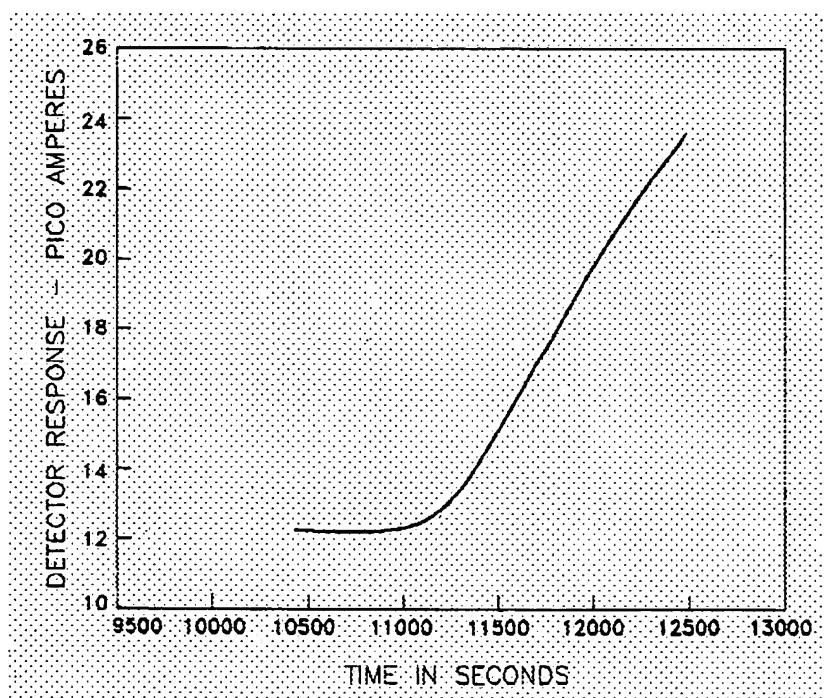
4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over US 5,212,993 to Mayer as applied to claim 5 above, and further in view of US 5,361,625 to Ylvisaker. Mayer discloses a device having all of the previous stated elements. Mayer further discloses a device further including computer hardware (CPU) (Fig. 3) with a temperature and pressure sensitive sensor and heater stabilization/control, electronic circuitry providing a numerical display of the gaseous concentration. Mayer does not expressly disclose computer hardware able to memorize a set of predetermined reference values of the transmission rates as a function of time for different ambient conditions, software incorporated into the hardware that is able to register the measured gas concentration directly from the gas analyzer and compare it with the reference values. Ylvisaker teaches a method and device for measuring the barrier/transmission/permeability properties of films (20) (i.e. materials employed to form packages) against gases (Figs. 1-6) employing the technique of matching test/measured data to theoretical (i.e. predetermined reference values) of transmission rates (i.e. permeation rates) (i.e. displayed output plot of Fig. 5), wherein the measurement values and transmission rates are calculated via a computer (hardware) with A/D converter running programming instructions (note: software is an inherent feature running on computers in data acquisition/measurement systems). It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to modify the device disclosed by Mayer, employing the comparison of measured data with predetermined reference values (i.e. theoretical values) and their subsequent display/plotting as taught by Ylvisaker, thus illustrating the ability of the device to accurately and directly measure the concentration of the gaseous substance, or the opposite, thus indicating the actual performance of the device (Ylvisaker: col. 4, lines 45-64).



**Fig. 2**  
**Ylvisaker**

*Allowable Subject Matter*

6. Claims 1-4 are currently objected to, but appear to have allowable subject matter. The Applicant is advised to make the changes suggested by the Examiner in any amendments made to the claims

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**Conclusion**


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Applicant is invited to review the Prior Art cited on PTO form 892 that is attached hereto.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fitzgerald whose telephone number is (571) 272-2843. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams, can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JF

05/12/2005



HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800